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Loye E. Martindale, Darwin W. Larson, Carol W. Clay Logan City Municipal Corporation; and the Municipal Council of Logan City v. Mayor Desmond L. Anderson, City Attorney J. Blaine Zollinger, City Auditor And Budget Director Duane A. Beck : Glenn T. Baird And Claude J. Burtenshaw's Brief As Amicus Curiae

Utah Supreme Court

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Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. J. Blaine Zollinger, Calvin L. Rampton, Suzanne M. Dallimore; Attorneys for Defendant-Appellants N. George Daines III; Attorneys for Plaintiff-Respondents

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IN THE SUPREME COURT OF THE STATE OF UTAH

LOYE E. MARTINDALE; DARWIN W. LARSEN;)
CAROL W. CLAY; LOGAN CITY, a)
Municipal Corporation; and the)
MUNICIPAL COUNCIL OF LOGAN CITY,)
Plaintiffs - Respondents,)

vs.)

Mayor DESMOND L. ANDERSON;)
City Attorney J. BLAINE ZOLLINGER;)
City Auditor and Budget Officer)
DUANE H. BECK,)
Defendants - Appellants.)

Case No.

15498

GLENN T. BAIRD AND CLAUDE J. BURTENSHAW'S BRIEF AS AMICUS CURIAE

Appeal from District Court of
Cache County, Utah
Honorable VeNoy Christoffersen.

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Logan, Utah 84321

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AS AMICUS CURIAE

JAN - 3 1978

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GLENN T. BAIRD AND CLAUDE J. BURTONSHAW'S BRIEF AS AMICUS CURIAE

We, the minority of the Logan Municipal Council, respectfully request you, Justices of the Supreme Court of the State of Utah, hear our objections to the decision of the First District Court issued in its Declaratory Judgment of October 20, 1977.

We are two of five councilmen elected in November, 1975, as the first action of implementing a newly adopted form of government. According to our understanding, Logan City is a legal and political entity created by the State of Utah. This means that the city government performs its acts of electing officials, making policies, and enforcing them by the authority of the State. It also means that city government is an integrated unit--a whole system.

ARGUMENT

POINT I.

THE ORIGIN OF THE DISPUTE

The newly adopted government was given by its adopted law six months to change from the commission to the council-mayor form of government. The transition formalities appeared to have been accomplished within the time limits and without difficulties. This seemed to have meant that the action agencies of the city were arranged so that all policy implementations were directly the responsibility of the mayor. The mayor's office alone became accountable to the citizens of Logan for the executive functions of the government. See Sections 2-1-1 through 2-1-6 of the Revised Ordinances of Logan City, a copy of which is attached hereto. This administrative organizational rearrangement, however, left untouched most of the substantive policies and many of the intra- and interdepartmental practices developed in the previous system. Much of the time would be needed to study, and where necessary and desirable, change the language of the ordinances and the practice of the agencies to conform to the new system. Critical to this study would be how the new system would relate to state laws; which of these laws, if any, were not applicable to the new form, and which ones were applicable but were to be applied in a different manner. At best, the transition, examining and rewriting existing ordinances, responding appropriately to current business, and adjusting to new relationships, would take months if not years to accomplish and much patience.

The transition process had hardly begun when it was interrupted and superseded by a different issue, one that not only consumed much time, but disrupted procedures and emotionally divided the members of the council. This disruptive issue came concurrent with the new system. The former government, the commission, in the closing days of its

existence, finalized a transaction in which a depleted city gravel pit was traded for other properties. The deal was consummated--the contract was signed. The commission, the personnel who made the deal, the old system, was gone.

Three of the new council members opposed the transaction--they were determined to undo the deal. We, two councilmen, opposed their efforts. The mayor, too, who had been a member of the old system and a party to the transaction, was suspect for his support of the transaction. Our feelings as councilmen were not that the transaction was a good or bad one but that a decision had been finalized. If legal irregularities occurred justifying an attack, the court was the appropriate forum. Since the city had become legally obligated, it should not initiate legal action against itself.

The three members, the majority of the council, however, felt that the city, regardless of which form of government existed at the time of the transaction, had made an uneconomical and possibly illegal deal, and that they, the elected officials, had an obligation to correct the mistake. It was the dispute about whether the council should settle this that the legal location of power issue between the council and mayor developed. The business of implementing the new system often took second place, and finally was indistinguishable psychologically and emotionally from the gravel pit one. The gravel pit issue, in our opinion, has not only distorted and disrupted the council in its transition activities, but is at the heart of the Declaratory Suit and thereby confuses the issues before the court.

In our opinion, the First District Court had ample reason to have held that the issues in the suit were primarily political rather than judicial, and in so doing would have supported the position to leave to the city the business of finally defining and implementing the new form of government. Such a denial would have permitted the city to use its

legally prescribed procedures, those in the state law, its Organic Act, to implement and give substance to the new government.

We respectfully ask the Supreme Court, therefore, to consider the following reasons for reversal of the First District Court decree.

POINT II.

THE LOWER COURT DISTORTS THE DISTINGUISHING FEATURE OF LOGAN CITY'S FORM OF GOVERNMENT

The lower court distorted Logan City's form of government when it accepted, in the manner it did, the Declaratory Judgment Suit. The suit was initiated in Logan City Council by three councilmen in the name of the city as plaintiff with a policy instrument they called a resolution. The three members ordered the city to pay the attorney's fees. The resolution was used to avoid the mayor's veto and the needed vote of four councilmen to override it.

POINT III.

THE DISTINGUISHING FEATURE OF LOGAN CITY'S FORM OF GOVERNMENT

By the acceptance of the council's initiated suit, the court ignored, and by its decision, destroyed the feature that made Logan's newly adopted form of government distinctive--worth the adopting effort. This distinguishing feature of the state statute, Logan's Organic Act, is the way it provided for effecting the city's governmental functions. Without this distinctive feature, there was no point in the state legislature providing the additional legislation. With this feature, Utah cities could exercise their independence in choosing the means of developing and using their granted political power to provide the services and solve the social problems of their local citizenry. Why the state legislature provided this variation of governmental form is noted in the statute's introduction.

The increasing demands for services and growing citizen awareness and concern have strained the ability of Utah's local governments to respond effectively, determines that there is a need to provide optional forms of municipal government under which citizens may vote to organize to meet their needs and desires. (Section 10-3-1202, Utah Code Annotated.)

Clearly enough the state legislature intended to create, by addition to the law, a unique functional arrangement. In the definition section of the State's Municipal Code, it anticipates this distinctive provision with a definition of the words, "governing body," which appear in the Code to identify the governmental process and the ultimate responsible authority of the various forms. It means, says the Code (Section 10-1-104), "collectively the legislative body and the executive of any municipality." "Unless otherwise provided" the law continues, the "governing body" for first, second, and third class cities and towns is to be the commissions or councils. The Optional Forms Act, the one adopted by Logan, unambiguously provides the "otherwise." The "otherwise" separates the two functions and thereby creates the unique system. Note the language:

The optional form of government known as the council-mayor form vests the government of a municipality which adopts this form in two separate, independent, and equal branches of municipal government; the executive branch consisting of the mayor and the administrative departments and officers; and the legislative branch consisting of the council. (Section 10-3-1209, Utah Code Annotated.)

The law prescribes the council's duties with these words: "The council shall pass ordinances, appropriate funds, review municipal administration, and perform all duties that may be required of it by law." (Section 10-3-1210.)

The "governing body" processes, according to the definition cited above from the Code, include more than passing ordinances, appropriating funds, etc. It includes what the mayor, the executive branch does. The holder of that office shall, says the law, "Enforce the laws and ordinances," "execute the policies adopted by the council." (Section 10-3-1219.)

The two branches, in combination, form the political, legal entity, the "governing body." Their combined assignments make them a unit, each performing a separate function. The council is not the action part of the city; it is not the front office. The executive office is. The mayor, on the other hand, does not initiate policy or appropriate funds. The council does. The mayor administers what is finally determined by the "governing body" to be the city's policies and laws. Each become specialists in their assignment--the council in creating policies for general application--the executive for the application of the general policies to particular situations.

The process of determining policy and law is also prescribed by the state law and the process so provided identifies the legal, political responsibility of the two-branched system. The process requires that "every ordinance or tax levy passed by the council shall be presented to the mayor for his approval or disapproval." (Section 10-3-1214.) It further specified that a part of a policy so small as a single item of an appropriation, once permitted adoption by a resolution, (Section 10-6-802) may be vetoed by the mayor. Vetoed proposals may be overridden by a two-thirds vote of the council. It is this procedure for which there is no provision for exception that makes the system distinctive. At least four elected officials create or approve every policy.

In another section of the State Code, not the Optional Forms chapter, the ordinance-making process is described in detail. To identify the requirements of the statute with the procedures for all cities, the state legislature included this language:

In municipalities where the mayor may disapprove an ordinance passed by the legislative body, the ordinance must show that it was passed with the mayor's approval or that if the mayor disapproved the ordinance, that it was passed over his disapproval. (Section 10-3-704(10), Utah Code Annotated.)

In the same chapter of the State Code that provides for the procedure to adopt an ordinance, the Code also provides for resolutions. In Section 10-3-717, the law reads:

...unless otherwise required by law, the 'governing body' (both branches), * may exercise all administrative powers by resolution including but not limited to: (1) establishing water and sewer rates; (2) charges for garbage collection and fees charged for municipal services; (3) establishing personnel policies and guidelines; and (4) regulating the use and operation of municipal property. Punishment, fines, or forfeitures may not be imposed by resolution.

It would be absurd to claim that these "administrative powers" were exclusively the duties of the mayor permitting that office alone the use of a resolution.

Except for the one restriction, the "governing body" has wide latitude in its use of the resolution. Presumably, the use of a resolution is left to the discretion of the "governing body." (Both branches.) Perhaps by ordinance, the "governing body" could specify the uses of the resolution.

To further clarify the procedure, the law states that the resolution passed by the "governing body... shall be in the form and contain sections substantially similar to that prescribed for ordinances." (Section 10-3-718, Utah Code Annotated.) Clearly, the resolution is not an instrument apart from the prescribed policy-making procedures. Nowhere does the law provide that the resolution becomes an exclusive means for council action. The policies of the city, by whichever instrument, are to be determined by the vote of at least three councilmen and the mayor or at least four councilmen following a mayor's veto. This procedure is an unequivocal part of Logan City's form of government. The judge had no legal basis to create a policy instrument which circumvents the procedure and destroys the form of the system.

Much ado is made by the attorney for the plaintiffs about the meaning and use of the words, "governing body." It is not theory or philosophy

* notes and parenthesis are ours.

which insures the distinctive form of the new system. It is the procedure that guarantees it.

The lower court was being prejudicially selective in its choice of the state law when it concluded that the council was the "governing body," and with that conclusion justified the circumvention of the procedure. The court's rationale for this conclusion was that the same language was used to describe the council's duties in the 1977 legislation as in the 1975. What strange logic. The court's transmitting interpretation gave meaning to the 1975 Optional Forms statute from a law that applies only to commission and council forms of government. It then gave the same meaning to the amended 1977 legislation by noting that the same language was used to state the council's duties. The statement of duties has nothing to do with the issue at hand. The court could have chosen a more relevant statute with common language and common history if that were the proper method of establishing validity-- and with relevancy to the issue. A 1959 act, for which the Optional Forms Act in 1975 was substituted, uses the identical language to assign the council its duties, and it leaves little ambiguity about the intention of the legislature to have the governing function shared. Note the language:

The municipal government of all cities of the first and second class is vested in a mayor and a board of five commissioners to be elected at large. The mayor shall be the chief executive officer. (Section 10-6-78, Utah Code Annotated.)

The Board of Commissioners (council) in cities of the first and second class shall be legislative bodies of such cities and as such shall pass ordinances, appropriate funds, and review city administration and shall perform all duties that may be required of them by law. (Section 10-6-79, Utah Code Annotated.)

It is clear from the 1959 statute that the council (commission), was intended to have only the legislative function; in the 1975 act the phrase "governing body," only meant legislative function (Section 10-6-104(2),

Utah Code Annotated); and in the 1977 act the phrase "governing body" was given the inclusive meaning of both functions. The council's procedure and duties are provided with the same language in the three statutes, as is the mayor's. The uniqueness of the system is the sharing of the governing body function.

The judge of the court performed a sleight-of-hand trick when he quoted the law creating two separate, independent, and equal branches, noted that the phrase, "governing body," had been eliminated from the 1977 statute, and then with misdirected reverse logic announced that "in examining the specific areas of conflict, the council will be treated as the governing body." With this almost hidden conclusion, all the issues of the case were decided. The system had been distorted. The system that shared political power ceased to be two separate, independent, and equal branches. The court was deceived by its own legerdemain

POINT IV.

THE DISPUTANTS ARE LEGISLATORS

The District Court also erred in accepting the suit by failing to note the role and function of the disputants. The court gave no significance to the fact that the dispute was between policy makers. The plaintiffs are councilmen, legislators for the City of Logan. The dispute was between them, the two of us, and the mayor in his policy-making role. The dispute that provoked conflicting legal opinions and ultimately lead to this suit was a proposed ordinance that was vetoed and failed in an attempted override. See Section 1-6-6 of the Revised Ordinances of Logan City attached hereto (marked as Defendant's Exhibits "B" and "C"). To claim that this dispute was "judicial" is to ignore the role of a legislator and the conditions necessary for a response to that role. The conditions for legislation must be such that the legislator may be deliberate and free to make choices between alternative possibilities.

Legal or judicial interference renders this discretionary activity meaningless and representative government becomes a hollow activity. The role is a creative one to discover solutions to social conflicts and problems. To identify a dispute between legislators in the course of the legislative process on a policy question as "legally ripe for judicial determination" is to make legislators accountable to the judge for their policy decisions. Legal accountability means that legislators may be sued in court for their decisions, i.e., if the court listens to them as plaintiffs, how can it not as defendants. For the legislative function to be significantly useful, the discretionary feature must be protected; the legislators must be accountable primarily to their voter constituency. The legislators cannot be both politically accountable and judicially subordinated during the process of the legislative activities. The election provides for political accountability. The legal or judicial process makes for legal accountability. The judge, by accepting into his court this suit from these city legislators, failed to note the difference between the two responses. The separation of powers doctrine recognizes the element of accountability in assigning functions to separate, equal branches of government. It is a crucial element in Logan City's peculiar form of government. The differences in assigned functions are to be noted between the office of the mayor and the council. Both are politically responsible by elections of the citizens. The mayor, however, is additionally legally accountable for the performance of his administrative assignment.

Legislators take the same oath of office as do the jurists. They both swear to uphold federal and state constitutions and the law. Both must be free to make decisions in their areas of assignment. If either is interrupted in its processes, their effectiveness is diminished.

POINT V.

INTERFERENCE WITH THE CITY'S PROCESSES

Having refused to note the significance of permitting legislators to be litigants on policy issues, the court, with impunity, invaded the legal entity of the city. The city has a jurisdictional area of authority and a procedure to determine policies and enforce them. Not only is it essential that legislators be free from unwarranted judicial interference, it is equally important that the city in its legislative functions be independent and maintain its initial responsibility over its jurisdiction. The court has failed to respect the integrity of the city and recognize its independence. For the court to claim that the disputes are "ripe for judicial determination" is not only to misunderstand the role and the identity of the disputants, but it also ignores that the issues being disputed are policy-making ones. Here it should be noted that although defendant's counsel has stipulated with plaintiffs that the "issues" raised are justiciable, those parties should not be allowed to confer jurisdiction upon the court where none in reality exists. Most of the issues had not been discussed by the council, and all of them, unless the court directs the voting of the council, must yet be determined by the legislative process.

The court chose to pronounce an ordinance (dated September 16, 1976), which was not raised as an issue in the Complaint, as being inadequate. It also chose to interpret financial procedures, transfer of funds, which could have been and still must be accomplished by ordinance. The external auditors and the state auditor are responsible to interpret fiscal procedures. The plaintiffs took the fiscal issue as a complaint to the court rather than to the council. It had not been discussed in the council. There is even a question as to whether there would have been a dispute in the council. If there was a legitimate one and the judge took it

seriously, he could have invited the auditors, state or external, who are initially responsible, to explain the practice and the law.

The real property transaction complaint of the suit was stated deceptively. It was stated as though someone, we or the mayor, supposed that the mayor could, without authorization, buy, sell, or lease real estate. We have insisted from the beginning that the mayor only performed those functions that were legally authorized, adopted by an ordinance, resolution, or appropriation. We did not contend that the mayor has inherent power. We insist that all of his activities be legally authorized. What we oppose is the involvement of the council in final or administrative action. We disagree that a transaction authorized by ordinance, appropriation, or policy directive needed a second or final council involvement. Final participation in a property transaction is no different from the final act of buying a car, a typewriter or a basketball. The judge's declaration about the inadequacy of an existing ordinance was about the council's involvement in the latter kind of transaction and was adopted not because we agreed we needed it, but as a compromise measure among the different positions of councilmen. But regardless of the degree of involvement of the council such activities are the prerogative of the city's "governing body" to be stated in ordinances. The judge's acceptance of this complaint not only distorts the procedure, it shows his failure to inquire about and to understand the nature of the dispute. The remedy or decree of the court is a presumptive intervention.

The court order that only the council can approve of innerblock and planned unit developments is evidence of the court's misunderstanding of the separation of powers system. Basic to the theory of the system is that skilled administrators execute a policy made by the council with far more equity and efficiency than an untrained council. The judge of the court in declaring the ordinance that assigns this function

to administration as being illegal, had no basis, legal or otherwise, for his declaration and interference. This was within the prerogative and judgment of elected officials. The claim of the judge is that approving these units is similar to approving subdivisions, therefore, is governed by that state statute. He does not say, however, why a decision about it cannot be made by the council. The writers of the state statute did not anticipate the Optional Forms Act or clusters or planned unit developments. Is the issue so legal as to be beyond the decision of the city policy makers? The court could just as well have decided that subdivision, as well as cluster and planned unit requirements, could have been complied with by an ordinance assigning the final approval to city administration. This would have permitted consistency and would have conformed to the new system's conceptual procedure of the "governing body". Is the risk of the ordinance being subsequently declared illegal in this circumstance different from those of any other legislative action? Certainly the concern one way or another on any of these matters does not have the urgency that justifies judicial intervention into the city's "governing body's" procedure by a Declaratory Judgment intervention. And if they do are there any disputes in the council and between council and mayor not subject to court action? What kind of city policy is not subject to court intervention during its formation?

The court claims that section in the State Code, (Section 10-3-1215), gives exclusive jurisdiction to the council over its internal matters and is not, therefore, subject to the mayor's approval or rejection. But the court fails to define these kinds of matters--we believe that if there are matters exclusively the concern of the council, that they should be distinguished by an ordinance (with the mayor's signature). The rules and order of business for conducting the council's business is, no doubt, sufficiently critical to be prescribed by ordinance. This would

add to citizen understanding and trust of the process. Following a legally prescribed procedure may avoid the appearance of arbitrary, whimsical action. But this, too, is the council's business.

We also believe that an action involving expending money for whatever purpose, this lawsuit included, is the city's business and is subject to the ordinance-making procedure for both its appropriation and expenditure.

The court, in disagreeing with this belief, seemed to imply the method of seeking legal counsel was somehow beyond the determination of the procedure of the "governing body." Is deciding if the municipal council needs legal counsel different from other issues decided by the council? Is it different because the judge believes that councilmen have an inherent right to counsel which the court must insure? If so, how has the court guaranteed it? The judge has said that three councilmen can decide. What happens to the rights of the minority of two or one; how will they be assured of paid-for counsel? Does a three member majority vote have less minority problems than four?

In the court's Declaratory and Injunctive Relief, the judge completely invades the city. He declares that with a council-passed resolution, it may pay the fees from appropriated or general funds, and to insure that it is not interfered with, he forbids the mayor to veto the council's efforts to pursue the three members' position of the "gravel pit" transaction. By what legal principle may a veto be denied? And then how is this process distinguished from the one by which the judge permits that by ordinance the council controls finances. How informative and how contradictory! However, the judge finally admitted that the business and the method of the council is to pass ordinances, appropriate funds....etc.

Finally, the judge "permanently enjoined the defendant or his successors from interfering with the plaintiffs in the exercise of their duties as

determined by the Declaratory Judgement." One need not even be a litigant in the judge's court to be threatened with his orders! He does not answer, do the plaintiffs retain their rights of plaintiffs after they cease to be councilmen, and/or do all succeeding councilmen become plaintiffs?

POINT VI.

THE RELIEF AND REMEDY--POLITICAL, NOT LEGAL

Most court action concludes with directives to the defendant based upon the rules of law stated by the court. The only order to the defendant-mayor is not to interfere with the plaintiffs' court-assigned claims. There is only one way the defendant could interfere and that is with the veto. He is specifically forbidden to veto the gravel pit investigation. This is unnecessary since the mayor is denied participation in the newly created resolution. In this suit, however, most of the remedies are dependent upon action by the plaintiffs. The plaintiff legislators sought court reversal of their political defeats. The implementation of the remedies is by council action with the resolution. The political nature of the remedies is clearly evident, however, when it is noted that the remedies become dependent upon the agreement of the council members. By court decree, three council members' complaints became legal; by the same court decree and court-invented procedure, the three council members in council implement the remedies. (See Exhibits "A-D" attached to defendant's Motion to Quash Subpoena which is a part of the trial court record.) For three months, they, with their new procedure and court support, the three council members have been doing all the things they wanted.

But what happens where there is disagreement? For example, what happens to the "gravel pit" issue or the hiring of legal counsel and any other related matters if the three cease to agree? Even more critical to this case, what happens if to pay for this suit or some other suit, an

appropriation of funds from the city is necessary? Has the judge changed the city's procedure so that three council members can appropriate city money as well as direct its expenditure? Or does the judge, by court decree, appropriate funds? What happens to the appropriation by ordinance requirement?

What happens when new councilmen take office? Even if by succession, as directed to the defendant-mayor, they may become only plaintiffs, there were no council member defendants and there are none now. Could new council members be under court order to favor the policies of the plaintiff members? What happens if they do not? Do disputes that once were "ripe for judicial determination" retain their "ripeness"? Or does it take the three council members to make them "ripe"? Has the court declared a legal principle that all councils shall retain legal counsel? Are all councils to investigate "gravel pit" like transactions and rescind them if they disagree? Has the court provided a principle about the city fund transfer? The procedure for buying, selling and leasing property? What if by unanimous agreement the "governing body" chose to implement by ordinance and with approval of the state auditor, different fund management practices? Will the court intercede? And if it does, do all elected officials become defendants?

The court really has not stated principles that would be useful in determining when disputes become legally "ripe," or which kind, or at what point a council can expect judicial interference. The court actually has left nothing for the office of mayor to do differently since currently he executes only those policies that were determined by the "governing body".

Clearly, the court is entirely dependent upon the political process of the council for implementation of its remedies. A better solution

may have been for the judge to join the council and become its constant legal and political conscience. There he could, with complete abandon, function in the political arena that he has chosen for himself in this case. The dependency on the council by the court for remedial implementation makes it apparent that the issues in the suit are political, not legal.

THE SUMMATION

We are mystified as to why the court felt compelled to accept the case. The plaintiff council members were clearly legislators. The disputes were about the business before the council. The plaintiffs were unsuccessful by the legal procedural requirements in the municipal council. Had they been successful, with one more vote, there would have been no court suit. Or had only two of the elected officials been disappointed, there would have not been one. Of the many issues stated in the initial suit, one is all that was actually discussed in the council at the time of the adoption of the resolution; the remainder were attached by the three council members or their attorneys but never presented for approval to the council. The many added ones were concoctions, which could have been council business, but were never legitimately before the council. Why the court would choose to join these legislators in pursuit of their policy issues is beyond our understanding. Obviously, the court's remedy is to join them in their council vote. Since the plaintiffs, once away from the court are beyond its control, they are free to pursue whatever issues the three of them and their attorneys agree to. It is even more mysterious how the court could justify tampering with the legally prescribed procedures simply to accommodate plaintiffs' legislative interests.

It is difficult to understand how the court could read statutes that define Logan's government as being two separate, independent, and equal branches of government and the phrase, "governing body," as

meaning collectively legislative and executive, and then in total contradiction, conclude that the council is the "governing body".

It is equally difficult to understand how the court legally questions the state legislative language that provides a distinctive council-mayor form of city government. All the other statutory forms give distinctive responsibility to councils or commissions. Is it not possible that the legislature intended to copy for the cities, the federal and state constitutional model that separates functions of government? And could it not have believed that with the separation feature the same purposes of other governmental levels be achieved at the local level? Is there a belief by the court that the principle of the "rule of law," the legal purpose of separation of power, cannot be implemented in city government? And does the court question the need of the city for the political device of check and balance? Perhaps the court does not believe that the state legislators noted, as the founding fathers did, that by separating legislative from the administrative functions, that they guarded against the inclination of policy makers to change policies when they administer them. And that many policies could only be fairly administered by experts, trained to see policy purposes and distinctions provided in policies formulated by a separate branch. Many legalists believe that laws have a better chance of being general and prospective, a rule of law requirement, by the separation of powers feature. Does the court question that a responsible uniform administration is best attained by a single publically responsible administrator?

The court could do well to clarify its objective. It gives no hint of illegality to the Optional Forms Act yet it questions, distorts and seems to deny the law's obvious intent to be a unique form. The special political interest that provoked the Declaratory Suit seems to have directed the court's legal conclusions.

The Judge of the First Judicial District, rather than clarifying the law, has confused it. This may have happened because he refused to

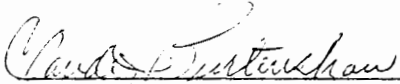
recognize in his decision that a form of municipal government was at stake. He did not permit hearings and gave no indication of how, what, or when he was making his decision. Most of the complaints were unsubstantiated; some of the charges were of no consequence and some were not even controverted. The judge seemed to be unconcerned with the truth of the complaints or the significance of his decision.

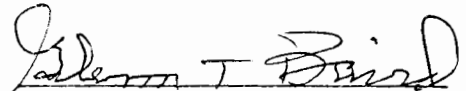
The court leaves much in doubt about Logan City's form of government. The mayor, questionably involved, was mistakenly the defendant and appears to have lost the case. Logan with the State of Utah may have been a more appropriate defendant, for their form of city government was the issue. Rather than defining the role of the office of mayor, the decision leaves many unanswered questions about the office. The law still states that the mayor's office is a separate, independent, and equal branch of city government, sharing in the "governing body" activities. The judge says that the office is subordinate to the "governing body" council. The law states that the mayor is responsible to the voters for the administration of city policies. The court says that the mayor is responsible to the council for administration. The law says that the mayor shall participate in all policy making by signing or vetoing ordinances, resolutions, tax assessments, and so on. The judge says that he cannot veto resolutions or other actions that the council interprets as exclusively its business. If the intent of the court was to clarify the relationships of the two offices, it failed. For us, it only confuses.

To us, the Utah State Legislature provided for the creation of two separate, independent and equal branches of government. It made the branches separate by distinguishing two functions and assigning one function to each branch. It made the branches independent by having the officers in each directly responsible to the electorate. It made the branches equal by the checking features that each has on the other.

The District Judge has tampered with the system. He did not declare it invalid, though to have done so would have made what he did more

understandable. Rather, he has destroyed or distorted it beyond its intended form. We, therefore, respectfully ask the Supreme Court of Utah to reverse the First District Court's decision.


Claude J. Burtenshaw, Councilman
Logan Municipal Council


Glenn T. Baird, Councilman
Logan Municipal Council

CERTIFICATE OF MAILING

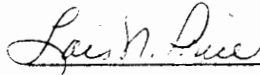
I hereby certify that I mailed a true and correct copy of the foregoing Glenn T. Baird and Claude J. Burtenshaw's Brief as Amicus Curiae this 30th day of November, 1977, to:

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TITLE 2

CITY GOVERNMENT

- Chapter 1. Departments for City Government.
2. Appointive Officers.
 3. Bonds and Oaths for City Officers.
 4. City Attorney.
 5. City Auditor.
 6. City Electrician.
 7. City Engineer.
 8. City Recorder
 9. City Treasurer.
 10. Chief of Fire Department.

Chapter 1.

Departments for City Government.

- Section 2-1-1. Branches of City Government.
- 2-1-2. The Executive Branch.
 - 2-1-3. The Judicial Branch.
 - 2-1-4. The Legislative Branch.
 - 2-1-5. Municipal Council Meetings.
 - 2-1-6. Mayor--Powers and Duties.

2-1-1. Branches of City Government. The City government shall be divided into three main branches:

- (a) Judicial
- (b) Legislative
- (c) Executive

2-1-2. The Executive Branch. The Executive Branch of government headed by the Mayor as the Chief Executive Officer is hereby divided into two administrative levels, the upper level being designated "department" and the lower level being designated "division" within a department.

(a) The departments of the administrative branch of government are designated as follows:

- (1) Department of Police
- (2) Department of Fire
- (3) Department of Recreation
- (4) Department of Environmental Health and Solid Waste Management
- (5) Department of Administration
- (6) Department of Public Works

- (7) Department of Parks
- (8) Department of Library
- (9) Department of Power

(b) There shall be the following divisions within and under the Department of Administration:

- (1) Purchasing and Stores Division
- (2) Personnel Division
- (3) Treasurer's Division
- (4) Recorder-Accounting Division

(c) There shall be the following divisions within and under the Department of Public Works:

- (1) Airport Division
- (2) Property and Building Management Division
- (3) Garage and Motor Pool Division
- (4) Water and Sewer Division
- (5) Cemetery Division
- (6) Planning Division
- (7) Streets Division
- (8) Engineering Division

(d) The City Attorney and Budget Officer of the city shall be staff advisors to the chief executive officer.

(e) The general functions, powers and duties of each department and department head are as follows:

(1) Department of Police and Police Chief - The function of the Department of Police is to preserve the peace and good order of the city, to detect and bring all violators of state and city law to justice, to prevent crime and protect life and property and to perform all other functions as required by law.

It is the duty and function of the Chief of Police to direct and control the activities of the Police Department and to perform all other functions and duties as required by law.

(2) Department of Fire and Fire Chief - The general function of the Fire Department is to prevent loss of life and property by fire by enforcing fire prevention laws and regulations, and by extinguishing fires and to perform all other functions and duties as required by law.

It is the duty of the Fire Chief to control and direct the activities of the Fire Department and to see to the proper education and training of its personnel, together with the proper maintenance of all Fire Department equipment.

(SECTIONS 2-1-1 to 2-1-6 amended)

and to perform all other functions and duties as required by law.

(3) Department of Recreation and its Director - The Department of Recreation has the function of assessing the current recreational needs of the city and of organizing and offering a broad range of recreational and leisure time programs for the citizens of Logan. In carrying out this function, it has the responsibility to coordinate programming efforts with other existing agencies or entities in the community. It shall perform such other functions required by law.

The Director of the Recreation Department has the function and duty to assess, organize and supervise, the recreational and leisure time programs of the city and perform such other functions and duties required by law.

(4) Department of Environmental Health and Solid Waste Management and its Director - The general function of the Department of Environmental Health and Solid Waste Management is to perform all functions of the city with respect to health and sanitation. Said department has control of the proper operation of the city's sewage lagoon and solid waste disposal systems. It shall perform all other functions as required by law.

The Director of the Department of Environmental Health and Solid Waste Management shall direct and control the sewer lagoon system and the solid waste disposal activities of the city. He shall conduct inspections and tests where desirable or necessary. He shall perform all other functions and duties as required by law.

(5) Department of Administration and its Director - The general function of the Department of Administration is to provide general administrative services in support of all other departments, divisions and staff officers of the city, and to supervise the managers of the divisions of Purchasing and Stores, Personnel, Treasurer, and Recorder-Accounting, and to provide the Mayor with information regarding the activities of those divisions and to coordinate their functions and activities. It shall perform all other functions as required by law.

The Director of the Department of Administration shall exercise general supervision over all divisions within said department. He is responsible for providing the Mayor with administrative information regarding the general or overall operations of the city and perform any other functions or duties required by law.

(6) Department of Public Works and its Director - The general functions of the Department of Public Works are to supervise and direct the managers of the Division of the Airport and the Division of Property and Building Management, the Motor Pool Division, the Water and Sewer Division, the Cemetery Division, the Planning Division, the Streets Division, and the Engineering Division. It performs all other functions as required by law.

The Director of the Department of Public Works supervises the managers of the above divisions. He supervises the design and construction of all public

projects by programming the cooperative efforts of the needed departments and divisions of the city. He performs all other functions and duties as required by law.

(7) Department of Parks and its Director - The general function of the Department of Parks is to maintain and improve the parks and the Willow Park Zoo, and to supervise the planting and maintaining of trees and other plants on city properties including alongside streets, and to perform all other functions as required by law.

The Director of the Department of Parks shall supervise, improve, and maintain all city parks, the Willow Park Zoo, and all other city property assigned to his care, and perform all other functions and duties required by law.

(8) Department of Library and its Board of Directors. The Library Department shall operate, maintain and care for the city library and perform any other functions required by law.

The City Library Board of Directors shall supervise the operation, maintenance and care of the library including the adoption of rules and regulations not inconsistent with law, for the governing of the library, shall appoint the city librarian, and perform such other functions and duties as required by law.

(9) Department of Power and its Director - The general function of the Department of Power is to furnish adequate electrical energy to all those needing the same and located within the city. It shall perform all other functions required by law.

The Director of the Department of Power directs and supervises the operation of the city's diesel power plant, its hydroelectric plant and the transmission and distribution of all electricity within the City of Logan. He shall perform all other functions and duties required by law.

(5) The general functions of each division within and under the Department of Administration and their managers are as follows:

(1) The Purchasing and Stores Division and its Manager - The general function of the Division of Purchasing and Stores is to purchase all the equipment supplies and other personal property for the city's departments and divisions upon the best terms and for the best price possible. The Division also accounts for and controls the inventory of said property for the city, and performs all other functions as required by law.

The Manager of the Division of Purchasing and Stores acts as purchasing agent for the city in securing all the supplies, equipment, and other personal property needed by the city's departments and divisions and controlling and monitoring the inventory of the same. He shall perform such other functions and duties required by law.

(2) The Personnel Division and its Manager - The Division of Personnel shall establish and implement guidelines and procedures in the city's hiring process, promotions, discharges, etc. to insure compliance with law affecting and regulating employees and employment relations. It shall suggest and implement such practices and policies as will insure the acquisition and retention of qualified employees for the city, and perform such other functions as required by law.

The Manager of the Personnel Division shall carry out the goals and functions of said Division including the proposal of wage schedules that adequately reflect market conditions to assure retention of qualified personnel for the city. He shall also supervise and assist all department directors and division managers in hiring city personnel, and perform all other functions and duties required by law.

(3) Treasurer's Division and its Manager - The Treasurer's Division's functions are to take custody and account for all monies, bonds, or other securities belonging to the city and to perform all other functions required by law.

The City Treasurer shall be responsible for the proper receipt of all city monies, to accurately account for and take custody of the same, and perform all other functions and duties required by law.

(4) Recorder-Accounting Division and its Manager -

(i) The general function of the Division of the City Recorder is to keep the records and papers of the city including contracts, deeds, ordinances and resolutions and to keep a record of the proceedings and the meetings of the governing body and perform all other functions required by law.

The City Recorder shall countersign all contracts made in behalf of the city and make a record of all contracts, properly indexed. He shall attend the meetings of the governing body and keep a record of their proceedings and keep and file such other records, documents, etc. of the city, and perform such other functions and duties as required by law.

(ii) The accounting functions of the Recorder-Accounting Division are to initiate and install systems and procedures including internal control procedures within and among the various departments and divisions of the city, to keep or cause to be kept the General Ledger and General Journals for all city funds, prepare payroll and payroll reports, and to conduct the billing operations of the city, and to perform all other functions required by law.

(iii) The data processing functions of the Recorder-Accounting Division is to provide computer service support to city operations, and to perform any other functions required by law.

(g) The general functions of each division within and under the Department of Public Works and their managers are as follows:

(1) Airport Division and its Manager - (A) The Airport Division shall provide adequate air service facilities for the city and its occupants and perform all other functions as required by law.

(B) The Manager of the Airport Division shall manage the airport facilities and maintain the same and perform all other functions and duties required by law.

(C) The County of Cache is hereby designated as the manager of the city's interest in the airport and is hereby delegated all of the rights, responsibilities, and duties in connection herewith. If the Mayor deems appropriate, he is hereby authorized to prepare and negotiate, a contract with the County of Cache, setting forth in greater detail, the management duties of Cache County and formalizing the relationship between the county and the City of Logan with respect to said airport facilities. The County is also hereby authorized to enforce any and all agreements between the county, the city and third parties with respect to use of airport facilities.

(2) Property and Building Management Division and its Manager - The general function of the Property and Building Management Division is to maintain, repair, improve, and oversee the leasing or managing of any city properties not directly managed by another division or department of the city and to perform all other functions required by law.

The Manager of the Property and Building Management Division shall supervise the maintenance, repair and improvement of city properties, and to manage other city property as above described and perform any other duties or functions required by law.

(3) Garage - Motor Pool Division and its Manager - The general functions of the Garage and Motor Pool Division are to maintain and repair all motor vehicles and similar equipment owned by the city. It shall supervise and coordinate the use of city motor vehicles among and within the various departments and divisions to facilitate a more efficient and economical use of said vehicles and perform any other functions provided by law.

The Manager of the Garage and Motor Pool Division shall supervise, control and manage the maintenance and repair of the city's motor vehicles and similar equipment and supervise and coordinate the use of said vehicles among the departments and divisions of the city. He shall perform all other functions and duties required by law.

(4) Water and Sewer Division and its Manager - The general functions of the Water and Sewer Division are to provide all persons and entities within the city with an adequate water supply as well as effective sewer and drainage service, and to perform such other functions required by law.

The Manager of the Water and Sewer Division supervises, assigns and schedules the work of the division, and is authorized to employ, appoint, transfer or

inspection of any part of the city's water and sewer system. He shall perform all other functions and duties required by law.

(5) Cemetery Division and its Manager - The general functions of the Cemetery Division is to provide the public with an adequate cemetery, properly managed and maintained, and to perform all other functions required by law.

The Manager of the Cemetery Division shall see to the proper division and organization of the cemetery into lots and spaces, sell lots, collect fees,

(SECTION 2-1-2(g)(l) amended 4/7/77)

manage and supervise burials and placement of headstones and supervise burials and placement of headstones and supervise the proper care and maintenance of the cemetery. He shall perform all other functions and duties required by law.

(6) Planning Division and its Manager - The general functions of the City Planning Division are to act as professional staff and advisor to the City Planning Commission and all other city departments and divisions needing such planning service or advice. Said division also evaluates all pending building permits and designs and evaluates city-initiated projects needing planning service or advice. It shall perform all other functions required by law.

The Manager of the Planning Division, or City Planner, shall assist other departments and divisions in evaluating all pending building permit applications to assure the proposed project's compliance with current land use ordinances. He shall assist the public in obtaining and understanding the city's land use and zoning ordinances, and guide for development. He shall supervise the performance of all other functions and duties of his division and any other functions or duties required by law.

(7) Streets Division and its Manager - The general functions of the Division of Streets are to see to the proper construction, maintenance, and repair of the city streets, sidewalks, curbs, gutters and other fixtures under the city's control and located upon the city's highways, roadways or rights of way. It shall perform all other functions required by law.

The Manager of the Division of Streets shall supervise the activities and scheduling of work in the division and assure the proper operation and maintenance of all equipment within said division. He shall review all work done by anyone on the city streets to assure its compliance with applicable standards. He shall perform all other functions and duties required by law.

(8) The Engineering Division and its Manager - The general functions of the Engineering Division are to provide necessary engineering services to all other departments and divisions of the city, to act as custodian of records of public improvements (identifying the detail of their construction and location), maps, plats, profiles, drawings, estimates, and specifications which in any way relate to the public improvements and engineering affairs of the city. The Engineering Division shall have general supervision of all construction work to see that it conforms to city plans and specifications, including the supervision of the building inspection functions of the city. It shall perform all other functions required by law.

The City Engineer or Manager of the Engineering Division shall exercise general control and supervision over the functions of the Engineering Division. He shall also act as the city's traffic engineer and perform all other functions and duties required by law.

(h) The functions of the following staff advisors are as follows:

(1) City Attorney - The City Attorney shall give the city government, including the City Council, legal advice and representation in all matters dealing with

the business of the city. He shall draft all ordinances, resolutions and contracts when called upon to do so and shall represent the city in all legal actions wherein the city is a party. He shall perform all other functions required by law.

(2) City Budget Officer - The City Budget Officer shall perform such functions and duties as are necessary to assure the city's compliance with the Utah Uniform Municipal Fiscal Procedures Act (U.C.A., 1953, Sec. 10-10-23 and sections following). He shall perform such other functions and duties as required by law.

2-1-3. The Judicial Branch. The Judicial Branch shall consist of the City Judge, his clerks and staff.

2-1-4. The Legislative Branch.^(u) The Legislative Branch shall consist of the Municipal Council with staff assistance to be furnished by the Executive Branch through the chief executive officer.

2-1-5. Municipal Council Meetings. (a) The Municipal Council shall hold its regular meetings two (2) times each month as follows:

On the first and third Thursdays of each month at 5:00 o'clock P.M. at Logan City Offices.

(b) Special meetings of the Council may be ordered by the Chairman, a majority of the Council, or by the Mayor. The order must be filed with the Recorder and must be signed by the person or persons calling the special meeting and must be entered in the minutes of the Council. Except in case of emergency, as declared by the Mayor, not less than two days notice of any special meeting must be given by the Recorder to each member not joining in the order, the notice of the meeting to be served personally or left at his usual place of abode. All regular meetings of the Council, to which any person not a principal officer is admitted, must be opened to the public.

2-1-6. Mayor--Powers and Duties. (a) The Mayor being the chief administrative officer of the municipality shall have such powers and duties as specified by the Optional Forms of Municipal Government Act as it may be amended from time to time and such other duties as may be required by law not inconsistent with said Act.

(b) The Mayor shall furnish the Municipal Council with a monthly report setting forth the amounts of all budget appropriations, the total disbursements to date from those appropriations, and the amount of indebtedness incurred or contracted against each appropriation, and the percentage of the appropriations incurred to date. Said monthly report shall be due to the Council from the Mayor on the third Thursday of each month for the prior month's expenditures and revenues in accordance with Section 10-6-123, Utah Code Annotated.

(c) The Mayor shall also submit to the Municipal Council at the end of each quarter, a statement of income and expenditures of each utility fund

(SECTIONS 2-1-1 to 2-1-6 amended 7/1/76)

reflecting their operation to the date of said statement for the current year and comparing said period with operating results for the same period during the preceding year. This statement of income shall be due from the Mayor to the Municipal Council on the third Thursday of the month following the end of the preceding quarter in accordance with Section 10-10-70, Utah Code Annotated, 1953.